Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

SONYA J. WILLIAMSON AND HER MINOR CHILDREN, ABNER WILLIAMSON, DIXIE WILLIAMSON AND JOLIE WILLIAMSON THROUGH THEIR NATURAL TUTOR, ROBERT WILLIAMSON,

PETITIONERS,

Versus

HAYNES BEST WESTERN OF ALEXANDRIA, INC., AMERICAN GENERAL FIRE AND CASUALTY COMPANY, MARYLAND CASUALTY INSURANCE COMPANY, BEST WESTERN INTERNATIONAL, INC., AND ST. PAUL MERCURY INSURANCE COMPANY, MR. & MRS. H.L. HAYNES, INDIVIDUALLY,

RESPONDENTS,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

SEABAUGH, BENSON, KEENE, DENNY & GERHARDT
J. Ransdell Keene,
U.S. Supreme Court Bar No. 7673
713 Southfield Road
Shreveport, Louisiana 71106
(318) 629-2900/(318) 629-2901 Fax
Counsel for Petitioners

QUESTIONS PRESENTED

1. Whether a party in a state court action has been denied her rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when her case is dismissed by the state court of last resort on review of a trial court's denial of a motion for summary judgment and (1) the state supreme court granted the motion for summary judgment without briefing, argument, or hearing, (2) the state supreme court entered the order of dismissal itself, without remanding the matter to a lower court, (3) the state supreme court granted the motion for summary judgment without the benefit of the entire record, (4) the party had no recourse to a higher court, because none exists, and (5) the party was denied appeals and post-trial relief upon the granting of the motion for summary judgment by the state supreme court, which are afforded to other litigants in the state court system.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at 940 So. 2d 648 (La. 11/06/2006).

The opinion of the intermediate state appellate court to review the merits appears at Appendix C to the petition and is not reported.

There is no trial court opinion.

JURISDICTION

The date on which the highest state court decided my case was November 3, 2006. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: January 12, 2007, and a copy of the order denying rehearing appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

This case arises from a petition for nullity pursuant to Louisiana Code of Civil Procedure Articles 2001-2006, filed in a Louisiana state court. In this action, petitioners sought to nullify an earlier state court judgment which was adverse to them, on the basis of ill practices on the part of respondents discovered after the earlier judgment became final.

The evidence in this case, as presented in opposition to respondents' motion for summary judgment, is clear that respondents' engaged in ill practices. The evidence presented by petitioners reveals a concerted effort by respondents to adduce false, inaccurate, misleading, and improper evidence in support of their affirmative defense that

petitioners were presenting a fraudulent claim at the original trial.

The respondents' fraud defense was predicated upon the assertion that no physical evidence supported petitioners' contention that Mrs. Williamson was shocked in July 1989 by her contact with an overhead light fixture in Room 170 of the Haynes Best Western from which water was leaking. This alleged absence of any evidence of a fault in the electrical

system, and the alleged lack of any physical explanation for the presence of water, permitted the defense to place the blame elsewhere – upon the petitioners. During the pretrial period (1990 to 1994), however, the respondents repeatedly obtained physical and expert evidence corroborating the existence of both an electrical defect in the relevant wall switch, and the source of the water leak down the light fixture (condensate from an air conditioner in the room above). Instead of disclosing this evidence during discovery, respondents concealed the evidence by, among other things, withholding evidence of the premises' defects, making inapplicable privilege claims, and removing the evidence of a premises defect from the premises, spoliating of this evidence, and then tendering the premises to petitioners for expert inspection. To make matters worse, respondents knowingly presented the false testimony at the June 1994 trial of two Haynes Best Western employees (its manager Barbara Dubois and superintendent Peter Murphy) that there had been no physical alterations of the premises since the time of the accident. This conduct was an intolerable abuse of the integrity of the judicial system.

When respondents' conduct was disclosed post-judgment, as a result of discovery in a related suit brought against the petitioners by St. Paul Mercury Insurance (a defendant who has since settled this case), respondents in this suit (and their attorneys) submitted an "Addendum" to their brief before the Louisiana Supreme Court in May 1997. Specifically, respondents represented to the Louisiana Supreme Court:

> Pursuant to the provisions of the Rules of Professional Conduct, defendants wish to disclose that they have recently discovered that the testimony at trial from hotel employees Pete Murphy and Barbara Dubois that the "electrical system" had never been modified in any way may be inaccurate. Further, defendants' electrical expert, Dr. Brown, was recently deposed in other pending litigation. At that time, it was learned that it is possible that the wall switches in the hotel room that Dr. Brown saw in 1994 may not have been the same switches as were present at the time of the accident.

The missing "wall switches" at issue were those discovered by one of the original defense counsel and his consulting engineer, George Cassellas, and photographed during their 1991 inspection of Room 170. Mr. Cassellas took a photograph of the wall switch (with face plate removed) and it shows visible signs of carbon arcing. Respondents' expert, Mr. Brown, performed a similar inspection of the wall switch in 1994, also taking a photograph of the switch with the face plate removed, and he produced these photographs at the deposition mentioned in the Addendum. The photographs demonstrate that the wall switches were not the same.

During pretrial discovery, the respondents provided petitioners with some of the photographs taken by Mr. Cassellas, but did not produce the wall switch photograph. Indeed, respondents declined to identify Mr. Cassellas in response to interrogatories in 1992 which asked respondents to identify "all individuals having knowledge of facts concerning any of the allegations" in their answer Exhibit 5 to the Third Supplemental Petition (Interrogatory 11). This failure to disclose the identity of Mr. Cassellas as not supported by any claim of privilege,

and any such claim would have been frivolous because: (i) the identity and opinions of a non-testifying consulting expert are not subject to work product immunity, are discoverable pretrial and are admissible at trial, State Department of Transportation and Development v. Westside Expressway, Inc., 589 So.2d 1060, 1061 (La.1991) (citing State Department of Transportation and Development v. Stumpf, 458 So.2d 448 (1984)); (ii) and contractual confidentiality agreement between a party and a consulting expert is void as against public policy in Louisiana, Stumpf, 458 So.2d at 451 (per curiam; on hearing), and (iii) there is no work product protection for photographs. Moak v. Illinois Central Railroad, 631 So2d 401 (La. 1994).

Accordingly, in this premises defect case, respondents intentionally failed to disclose the identity of their expert who had first hand knowledge of the conditions of the premises (including his determination about the presence of an electrical defect). Moreover, at trial they knowingly, adduced evidence from their own second expert based upon a premises that they had materially altered by a change of the defective material switch, and presented inaccurate testimony from two employee

witnesses that the premises had not been altered. While there is a wealth of other evidence of ill practices, these facts alone-conceded by defendants own admissions to the Louisiana Supreme Court are material to a finding of ill practices.

Following the filing of the nullity action, respondents moved for summary judgment and their motions were granted by the trial court. However, petitioners timely moved for a new trial in the trial court and the trial court overturned its earlier grant of summary judgment and granted petitioners a new trial. On new trial, the trial court denied respondents' motions for summary judgment.

Respondents sought appellate review of the trial court's denial of their motions for summary judgment, via writ of certiorari to the appropriate Louisiana intermediate appellate court. The intermediate Louisiana appellate court denied respondents' writ application, without opinion. (Exhibit C)

Thereafter, respondents sought a writ of certiorari to the Louisiana Supreme Court. The Louisiana Supreme Court summarily granted respondents' writ application and entered summary judgment in favor of respondents.

It is important to note that (1) the Louisiana Supreme Court granted the respondents motion for summary judgment without briefing, argument, or hearing, (2) the Louisiana Supreme Court entered the order of dismissal itself, without remanding the matter to a lower court, (3) the Louisiana Supreme Court granted the motion for summary judgment without the benefit of the entire record, (4) petitioners had no recourse to a higher court, because none exists, and (5) petitioners were denied appeals and post-trial relief upon the granting of the motion for summary judgment by the Louisiana Supreme Court, which are afforded to other litigants in the Louisiana court system.

Petitioners timely applied for rehearing with the Louisiana Supreme Court, which was denied.

REASONS FOR GRANTING THE PETITION

This Court has recognized that if a full and fair trial on the merits is provided, the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review. Griffin v. Illinois, 351 U.S. 12, 18 (1956); District of Columbia v. Clawans, 300 U.S. 617, 627 (1937); Ohio v. Akron Park District, 281 U.S. 74, 80 (1930); Reetz v. Michigan, 188 U.S. 505, 508 (1903); McKane v. Durston, 153 U.S. 684, 687-688 (1894).

"When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." Lindsey v. Normet, 405 U.S. 56 (1972); Griffin v. Illinois, supra; Smith v. Bennett, 365 U.S. 708 (1961); Lane v. Brown, 372 U.S. 477 (1963); Long v. District Court of Iowa, 385 U.S. 192 (1966); Gardner v. California, 393 U.S. 367 (1969). Cf. Coppedge v. United States, 369 U.S. 438 (1962); Ellis v. United States, 356 U.S. 674 (1958).

The procedure employed by the Louisiana Supreme Court in this case (and in numerous other cases like it)

constitutes an arbitrary and capricious denial of petitioners' rights to appeal and other post-trial relief afforded similarly situated persons.

In other words, some Louisiana litigants are being denied their rights to equal protection and due process under the United States Constitution. While petitioners are aware that this Court is not concerned with issues of state law, this Court should intervene in this matter because the highest court of a state is employing a procedure which actively denies litigants rights guaranteed under the United States Constitution.

A. Louisiana law affords the right to appeal a judgment of dismissal based on a motion for summary judgment.

"Appeal is the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court." La. C.C.P. art. 2081 (emphasis added). "A final judgment is appealable in all cases in which appeals are given by law, whether rendered after hearing, by default, or by reformation . . . ." La. C.C.P. art. 2083 (emphasis added).

". . . [S]ummary judgments, are final judgments and shall be rendered and signed in the same manner and with the same effect as if a trial had been had upon evidence regularly adduced." La. C.C.P. art. 968 (emphasis added).

Therefore, under Louisiana law, a litigant whose case is dismissed on a motion for summary judgment is entitled to all of the same rights as a litigant who case had been tried to a conclusion. These rights include (1) a right to appeal (La. C.C.P. art. 2082), (2) a right to apply for a new trial (La. C.C.P. 1971, *et seq.*), and (3) the right to have a higher court review the entire record on appeal.

B. Some Louisiana litigants are arbitrarily being denied their rights to appeal and post-trial relief.

The procedure being employed by the Louisiana Supreme Court in this case (and in other cases)[1] is inherently flawed and violates the United States Constitution. In cases such as this one, where the Louisiana Supreme Court, as the court of last resort, grants the ***initial relief*** on a motion for summary judgment, without remanding the matter to the trial

court for entry of judgment, the party against whom the dismissal is summarily deprived of its post-trial rights, in denying its right to appeal.

To make matters worse, the Louisiana Supreme Court granted this extraordinary remedy without the benefit of the record from the trial court. The Louisiana Supreme Court relied solely on the briefs of the parties (and attachments to those briefs) in dismissing petitioners' case. Therefore, not only have petitioners been denied post-trial and appellate relief, their case has been dismissed without a single appellate court ever seeing the actual record.

Moreover, because the Louisiana Supreme Court is a discretionary or writ court (like this Court), its decisions in which parties are denied their appeal and post-trial relief rights are completely arbitrary.

See, e.g., Simoneaux v. Excel Group, L.L.C., 936 So.2d 1236 (La. 09/01/2006) ("Accordingly, the writ is granted. The ruling of the trial court is reversed, defendants' motion for summary judgment is granted, and plaintiff's petition is dismissed with prejudice at his cost."), and Marino v. Martin Oil Country Tubular, Inc., 931 So.2d 1089 (La. 06/23/2006) ("The ruling of the trial court is reversed, defendant's motion for summary judgment is granted, and plaintiff's petition is dismissed with prejudice at his cost.").

This procedure flies in the face of this Court's jurisprudence that appeals cannot be afforded to some and arbitrarily denied to others. This is a blatant constitutional violation, which is an anathema to the rule of law.

For example, in this case, the purported legal basis for the Louisiana Supreme Court's ruling is contrary to law. However, petitioners have no recourse and no court to which it can show legal error. Moreover – and this forms the constitutional violation at issue here – every other litigant in the state of Louisiana who has an adverse judgment rendered against it has both post-trial and appellate recourse.

Accordingly, this procedure of the Louisiana Supreme Court constitutes a rank constitutional violation which should not be tolerated by this Honorable Court. Petitioners respectfully request that this Honorable Court grant the writ application and docket this matter.

CONCLUSION

Petitioners successfully defended a motion for summary judgment filed against them in the trial court. Thereafter, the intermediate court of appeal denied review of the trial court's denial of the motion for summary judgment. However, the Louisiana Supreme Court, in direct violation of the rulings of this Court and the Constitution of the United States, peremptorily granted the motion, leaving petitioners without post-trial or appellate recourse.

The Louisiana Supreme Court has employed this unconstitutional procedure several times during the last year and continues to employ it. Petitioners respectfully submit that this Honorable Court should grant their writ application and docket this matter for argument. This issue is appropriate for this Court to consider because the constitutional rights of the citizens of an entire state are at stake and the constitutional violations originate with the highest court of the State of Louisiana. No court, other than this one, will ever be able to remedy this rank constitutional violation.

Petitioners respectfully request that this Honorable Court grant the writ application and docket this matter.

Respectfully submitted,

J. Ransdell Keene
U.S. Supreme Court Bar No. 07673
713 Southfield Road
Shreveport, Louisiana 71106
(318) 629-2900 / (318) 629-2901 Fax
ATTORNEYS FOR PETITIONERS

EXHIBIT A

Analysis

As of: Apr 10, 2007

SONYA J. WILLIAMSON, ET AL. VS. HAYNES BEST WESTERN OF ALEXANDRIA, INC., ET AL.

NO. 2006-CC-1928

SUPREME COURT OF LOUISIANA

2006-1928 (La. 11/03/06);

940 So. 2d 648; 2006 La. LEXIS 3067

November 3, 2006, Decided

NOTICE: [**1] DECISION WITHOUT PUBLISHED OPINION

SUBSEQUENT HISTORY: Rehearing denied by Williamson v. Haynes Best Western of Alexandria, Inc., 2007 La. LEXIS 96 (La., Jan. 12, 2007)

PRIOR HISTORY: IN RE: Hayes, H. L. Mr. & Mrs.; Maryland Casualty Ins. Co.; American General Fire and Casualty Company; Haynes Best Western of Alexandria, Inc.; - Defendant(s); Applying for Supervisory and/or Remedial Writs, Parish of Orleans, Civil District Court Div. F, Nos. 1995-16175; to the Court [**2] of Appeal, Fourth Circuit, No. 2006-C-0705.

JUDGES: Chet D. Traylor, Catherine D. Kimball, Jeffrey P. Victory, Jeannette Theriot Knoll, John L. Weimer. CALOGERO, C.J., would grant and docket. JOHNSON, J., would deny.

OPINION: [*648] Granted. Plaintiffs have failed to demonstrate a causal relationship between defendants' alleged

fraud or ill practice and the obtaining of the judgment. See Ward v. Pennington, 523 So.2d 1286 (La. 1988). Accordingly, the judgment of the trial court is reversed and summary judgment is hereby granted in favor of defendants, dismissing plaintiffs' action for nullity.

CALOGERO, C.J., would grant and docket.

JOHNSON, J., would deny.

EXHIBIT B

Analysis

As of: Apr 10, 2007

SONYA J. WILLIAMSON, ET AL. VS HAYNES BEST WESTERN OF ALEXANDRIA, INC., ET AL.

NO. 2006-CC-1928

SUPREME COURT OF LOUISIANA

2006-1928 (La. 01/12/07);

948 So. 2d 148; 2007 La. LEXIS 96

January 12, 2007, Decided

NOTICE: [*1] DECISION WITHOUT PUBLISHED OPINION

PRIOR HISTORY: IN RE: Williamson, Sonya J. Et Al.; Applying for Rehearing of this Court's order dated November 3, 2006; Parish of Orleans, Civil District Court Div. F, Nos. 1995-16175; to the Fourth Circuit Court of Appeal, No. 2006-C-0705. Williamson v. Haynes Best Western of Alexandria, Inc., 940 So. 2d 648, 2006 La. LEXIS 3067 (La., Nov. 3, 2006)

JUDGES: Catherine D. Kimball, Chet D. Traylor, Jeannette Theriot Knoll, John L. Weimer. CALOGERO, Chief Judge, would grant. JOHNSON, J., would grant.

OPINION: Rehearing denied.

CALOGERO, Chief Judge, would grant.

JOHNSON, J., would grant.

NO. 2006-C-0705 **EXHIBIT "C"**

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

SONYA J. WILLIAMSON, ET AL

VERSUS

HAYNES-BEST WESTERN OF ALEXANDRIA, INC., ET AL

IN RE:	MARYLAND CASUALTY INSURANCE COMPANY, ET AL
APPLYING FOR:	SUPERVISORY WRIT
DIRECTED TO:	HONORABLE YADA MAGEE, JUDGE CIVIL DISTRICT COURT, ORLEANS PARISH
	DIVISION "F", 95-16175

WRIT APPLICATION DENIED

On the showing made, relator's application for supervisory writ is denied.

New Orleans, Louisiana this 30th day of June, 2006.

s/Judge Patricia Rivet Murray
Judge Patricia Rivet Murray

s/Judge Charles R. Jones
Judge Charles R. Jones

s/Judge Edwin A. Lombard
Judge Edwin A. Lombard

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